IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIDNARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 486 OF 2007

IN

SUMMARY SUIT NO. 3209 OF 1986

J.K. Oil Agency .... Plaintiffs

Vs.

M/s Vijay Soaps Products .... Defendants

Ms. Anita Castellinho i/b Pandya & Co. for Plaintiff/ applicant.

Mr. Behram Shroff i/b Tejpal & Co. for defendants/ respondents.

CORAM : A.S. OKA, J.
DATE : 13TH JULY, 2007

P.C.

1) Mentioned not on board.

2) Heard learned Counsel for the plaintiffs in support of Chamber Summons. The prayer in this Chamber Summons is for grant of permission to amend the cause title of the plaint. The plaintiff has shown in the cause title in the plaint the name of the Plaintiff as M/s J.K. Oil Agency, a partnership firm. By the proposed amendment, the plaintiffs want the said name to be substituted by "Jay Kay Oil Agency", a proprietary firm of

Jafferali family Trust.

3) The submission of the learned counsel for the plaintiffs is that the proposed amendment will not change the nature of the suit. She submitted that as pointed out in the Affidavit in support of Chamber Summons, there is an inadvertent mistake made at the time of drafting the plaint. She, therefore, submitted that the proposed amendment being formal in nature deserves to be allowed. The amendment is strongly opposed by the learned counsel for the defendants by filing a reply.

4) I have considered the submissions made by the learned counsel for the Plaintiffs. The plaint is affirmed on 4th October 1986 by one Siraj Hamid describing himself as a partner of M/s J.K. Oil Agency. In the cause title of the plaint, it is disclosed that M/s J.K. Oil Agency is a partnership firm duly registered under Indian Partnership Act, 1932. By the proposed amendment, the name of the original plaintiff is sought to be replaced by the following:

> JAY KAY OIL AGENCY, a Proprietorship firm Of "Jafferali Hamid Family Trust" represented by the Trustees viz. Siraj Jafferali Hamid and Yasmin Chhotubhai

Hamid, having its place of business at 340, Katha Bazar, Mumbai - 400 009.

5) It is pertinent to note that the written statement was lodged by defendants on 3rd December 2003. A specific contention has been raised in the written statement that there is no firm by the name M/s J.K. Oil Agency, which is registered under the Indian Partnership Act, 1932.

6) The Chamber Summons for amendment of this drastic nature is moved more than 20 years after the plaint was lodged. Earlier the plaintiff is described as a registered partnership firm and now by the proposed amendment which is sought to be made 20 years after institution of the suit, the name of the original plaintiff is sought to be substituted by a proprietary concern of a family trust.

7) Such a drastic amendment will change the nature of the suit. The claim in the suit filed in the year 1986 is for recovery of money. The Plaintiff which is described as a registered partnership firm is sought to be substituted by a Proprietary Concern of a family trust. The claim of the said Proprietary concern is obviously barred by limitation. There is no merit in the Chamber

Summons and accordingly it is dismissed.

8) Place the suit on board on 10th August 2007 under the caption of ‘Dismissal’.

(A.S. OKA, J.)